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SPINE MP
LERNER, DAVID, et al.
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090

COPY MAILED

SEP 21 2009

OFFICE OF PETITIONS

In re Application of	:	
Errico, et al.	:	
Application No. 10/784,637	:	DECISION ON PETITION
Filed: 23 February, 2004	:	UNDER 37 C.F.R. 1.78(a)(6)
Attorney Docket No. F-270	:	

This is a decision on the petition under 37 C.F.R. § 1.78(a)(3), filed on 27 January, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §120 for benefit of priority to the prior-filed application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 C.F.R. §1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 C.F.R. §1.78(a)(2)(ii). In addition, the petition under 37 C.F.R. §1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. §120 and 37 C.F.R. §1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in §1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

All the above requirements having been satisfied, the late claim for benefit of priority under 35 U.S.C. §120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 C.F.R. § 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(4) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

This application is being referred to Technology Center/AU 3738 for consideration by the Examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Any questions concerning this decision on petition may be directed to John J. Gillon, Jr., attorney, at (571) 272-3214. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

A handwritten signature in black ink, appearing to read 'Anthony Knight' with a stylized flourish at the end.

Anthony Knight
Supervisor
Office of Petitions

ATTACHMENT : Corrected Filing Receipt



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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	TOT CLAIMS	IND CLAIMS
10/784,637	02/23/2004	3738	385	F-270	12	2

CONFIRMATION NO. 8185

CORRECTED FILING RECEIPT

51640
SPINE MP
LERNER, DAVID, et al.
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090



Date Mailed: 09/21/2009

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Joseph P. Errico, Kirkland, WA;
Michael W. Dudasik, Nutley, NJ;
Rafail Zubok, Midland Park, NJ;

Power of Attorney: The patent practitioners associated with Customer Number 36402

Domestic Priority data as claimed by applicant

This application is a CIP of 10/282,356 10/29/2002 PAT 7,169,182
which is a CIP of 10/256,160 09/26/2002 PAT 6,989,032
which is a CIP of 10/175,417 06/19/2002 PAT 7,563,285
which is a CIP of 10/151,280 05/20/2002
which is a CIP of 09/970,479 10/04/2001 PAT 6,669,730
and is a CIP of 10/140,153 05/07/2002 ABN
and said 09/970,479 10/04/2001
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is a CIP of 09/970,479 10/04/2001 PAT 6,669,730
and is a CIP of 10/128,619 04/23/2002 PAT 6,863,689
which is a CIP of 09/906,119 07/16/2001 PAT 6,607,559
and is a CIP of 09/982,148 10/18/2001 PAT 6,673,113

Foreign Applications

If Required, Foreign Filing License Granted: 05/18/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/784,637**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Instrumentation for properly seating an artificial intervertebral disc in an intervertebral space

Preliminary Class

606

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

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LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

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This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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Correspondence Information

Correspondence Customer Number:: 00530

Representative Information

Representative Customer Number:: 51640

Domestic Priority Information

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
This Application	Continuation of	10/282,356	10/29/02
10/282,356	Continuation-in-part of	10/256,160	09/26/02
10/256,160	Continuation-in-part of	10/175,417	06/19/02
10/175,417	Continuation-in-part of	10/151,280	05/20/02
10/151,280	Continuation-in-part of	09/970,479	10/04/01
09/970,479	Continuation-in-part of	09/968,046	10/01/01
10/151,280	Continuation-in-part of	10/140,153	05/07/02
10/140,153	Continuation-in-part of	09/970,479	10/04/01
10/140,153	Continuation-in-part of	10/128,619	04/23/02
10/128,619	Continuation-in-part of	09/906,119	07/16/01
10/128,619	Continuation-in-part of	09/982,148	10/18/01

Foreign Priority Information


Assignee Information

Assignee name:: SpineCore, Inc.
Street of mailing address:: 475 Springfield Ave
4th Floor
City of mailing address:: Summit
State or Province of mailing address:: NJ
Postal or Zip Code of mailing address:: 07901

Dated: January 22, 2009

Respectfully submitted,

By


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Applicant Authority Type:: Inventor
Primary Citizenship Country:: US
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State or Province of mailing address:: NJ
Postal or Zip Code of mailing address:: 07432



Application Data Sheet

Application Information

Application Type::	Regular
Subject Matter::	Utility
Suggested Group Art Unit::	3738
CD-ROM or CD-R?::	None
Sequence submission?::	None
Computer Readable Form (CRF)?::	No
Title::	INSTRUMENTATION FOR PROPERLY SEATING AN ARTIFICIAL DISC IN AN INTERVERTEBRAL SPACE
Attorney Docket Number::	SPINE 3.0-437 CIPCIPCIPCIPCIPCON II
Request for Early Publication?::	No
Request for Non-Publication?::	No
Suggested Drawing Figure::	Fig. 6d
Small Entity?::	No
Petition included?::	No
Secrecy Order in Parent Appl.?::	No

Applicant Information

Applicant Authority Type::	Inventor
Primary Citizenship Country::	US
Status::	Full Capacity
Given Name::	Joseph
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Family Name::	Errico
City of Residence::	Green Brook
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Country of Residence::	US
Street of mailing address::	29 Deer Path Circle